

TITLE 326 AIR POLLUTION CONTROL BOARD

#05-232 (APCB)

SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On October 19, 2006, the air pollution control board (board) conducted the first public hearing/board meeting concerning the development of new rules at 326 IAC 25. Comments were made by the following parties:

Improving Kid's Environment (IKE)

Following is a summary of the comments received and IDEM's responses thereto:

Comment: These kinds of programs are really important. It's very important for companies to understand that there are good reasons to go beyond compliance, and it's important for agencies like IDEM to provide opportunities for companies to do that, so I'm supportive of the concept of this program very much.

I also wanted to express my appreciation for how open IDEM has been in the rulemaking process to invite people in. They've been taking a lot of time to talk to people about the program and explain their reasoning for things, and that's very much appreciated, and I know that several of my own comments led to changes in the draft rule, and I appreciate that as well. (IKE)

Response: IDEM appreciates the positive feedback on ESP and CLEAN and IDEM's involvement of interested stakeholders. IDEM also looks forward to this initiative being the starting point for developing partnerships to improve the environment and economic climate in Indiana and encourages those that have been involved to stay involved as IDEM looks to optimize these and other programs for the benefit of Hoosiers.

Comment: The most important thing for a program like this is to maintain its credibility and for everyone to feel assured that the companies in this program truly are going beyond compliance and that environmental standards are not being relaxed in any way for those companies. (IKE)

Response: IDEM agrees and believes the program has been developed in a manner that will establish and maintain the credibility of the program. The requirements of the program in this rule will provide the assurance that member companies are going beyond compliance and that environmental standards are not being relaxed.

Comment: Resources are going to be really important. We won't know until the deadline how many companies are interested in this and how much resources it will take, but it's important for IDEM to devote the appropriate amount of resources to reviewing the applications

and to keeping track of how the companies perform if they're given the privilege of being in this program. IDEM should be sure resources are available to manage the program properly. (IKE)

Response: IDEM's Office of Pollution Prevention and Technical Assistance (OPPTA) has been preparing to support this program since the First Notice of Rulemaking, over a year ago, by providing EMS and program specific training to additional OPPTA staff, outside the P2 program, should the need arise to provide additional resources. OPPTA received a grant from U.S. EPA to implement ESP and provide contractor assistance if needed. ESP will provide efficiency improvements for both IDEM and members of the program. States with similar programs have increased overall agency efficiency as a result of these programs. IDEM's program has been designed to maximize agency efficiency and provide real business value to members.

Comment: The rule includes an annual report that each company needs to submit. IDEM should also issue an annual report that summarizes the success of the program so that the information is available in one place for the public to view. This will make it easy for the public to see that this program is being successful and that these companies really are going beyond compliance and that there are not problems with it. (IKE)

Response: IDEM's Office of Pollution Prevention and Technical Assistance is already required by statute (IC 13-27-6-1) to produce an annual report that includes all activities, including ESP. Based on this and similar comments, IDEM has agreed to provide a link to compliance information for regulated entities on the ESP website, directly linking each member to their most up to date compliance history. Concerned citizens have expressed a desire to keep all information updated and readily accessible. This website will provide much more recent data than an annual report that takes months to complete and publish. The report will also include the names of any member that has been removed from the program.

Comment: Sections 13 and 14 of the rule list the items that the companies or the municipalities need to provide in their annual summary. I would suggest that they also provide a summary of their compliance history for the previous year. Hopefully, the summary would be, "We were in compliance for the entire year. We received no notices of violation, we've had no agreed orders." Otherwise they probably should not be in this program. But it would provide an extra level of assurance to the public if they could see that along with the companies' progress on their beyond compliance activities, they could also see that there were no rule or law violations in the last year. It would strengthen the credibility of the program from the perspective of the public. (IKE)

Response: IDEM agrees and has provisions in the rule to address this. The ESP annual summary already requires more than a statement or history of compliance over the past year. Providing a history could be a simple acknowledgment that the source wasn't inspected that year or had nothing to report. As it stands now, the annual report requires each member to determine their compliance status at the time of submission and certify, that to their best of their knowledge and based on reasonable inquiry, it is in compliance with all applicable standards.

Comment: In general, I don't disagree that incentives need to be provided for companies to feel that this is a good thing for them. I just want to express real concern about the incentives related to inspections, and particularly preannounced inspections. I think that it is a very, very bad idea to have a system where a regulated industry gets an advance announcement, even if it's 24 hours in advance, that the inspector is coming the next day.

There are companies I've talked to that are very much beyond compliance that have said it is not an incentive they would ever accept, because they want people to know that an inspector can come any time, unannounced, and they are ready to be inspected. So, I would really urge IDEM to rethink that. (IKE)

Response: This provision is not included in the rule, however, a response is being provided in an effort to explain the rationale behind this aspect of the program. As indicated, not all members will desire to request this incentive. However, today, more and more facilities have one environmental manager overseeing numerous facilities. These member facilities and environmental managers have earned a mere 24-hour notice to ensure they are present or have arranged for proper representation at the facility.

Currently, in an effort to ensure proper representation and inspection criteria, there are several inspection scenarios where advance announcement of the inspection is provided today, outside of ESP. It is IDEM's intent to ensure inspections of ESP facilities are credible and thorough. Proper representation is essential to such an inspection process.

Comment: One of the reasons given for preannounced inspections is that sometimes an inspector comes and the environmental manager isn't there that day because he's at another plant site and that makes the inspection difficult and it's inefficient for IDEM to have to come back another day. Because there will be relatively few companies in this program (maybe more as it gets more successful), an alternative incentive that could be offered rather than announcing the inspection a day ahead, would be for IDEM offer to come back another day if the environmental manager isn't there. That wouldn't be much of a burden on IDEM because there will be relatively few companies involved. (IKE)

Response: IDEM has limited inspection resources, therefore, it is not an efficient use of these resources to go out into the field and not conduct agency business, returning to the same facility at a later date. This proposed alternative also lends itself to "scheduling inspections" which the agency feels could jeopardize the integrity of the program.

Comment: Section 10 of the rule talks about the kinds of criteria that either will preclude a company from being considered for this program or might preclude a company from being considered for this program. It can be debated which criteria ought to be in which category. There's one in the "might" category that I would urge you to consider putting in the "shall preclude" category. If the company is in noncompliance with either a federal or a state consent decree or agreed order, it is not appropriate for the company to be eligible for this program until the problems are resolved. (IKE)

Response: This provision was recently discussed again in an effort to better understand the concern and consider this comment. It was determined that far too many insignificant conditions not related to environmental performance are included in Agreed Orders and Consent Decrees to remove IDEM's ability to assess these cases individually. However, this provision still provides IDEM with the ability to deny or revoke membership in these cases and will be used as intended to ensure and maintain a high standard of program credibility.

Comment: In relation to the ten-year permit renewals, there are circumstances under which there's some value added to reviewing some permits more frequently than once every ten years. That is a long time for a permit to go without any attention, especially if this is also a company that may be getting inspected less frequently because it's in this program. So, I would suggest that IDEM consider some form of check-in. There may well be applicable rules that have been promulgated in that period of time, and having an every-five-year look gives you a little bit more regular time to check in on things like that. (IKE)

Response: IDEM has already begun rulemaking to make this a change for all regulated entities. Currently, many of these existing permits have been extended several years beyond the 5-year permit term. In an effort to increase overall agency efficiency, IDEM desires to issue these permits as 10-year permits for program members as appropriate and allowed by federal rule.

Comment: The comments on monthly VOC monitoring that have come in, both from my organization and from U.S. EPA, indicate there is concern with monthly averaging of VOC emissions. The health standard for ozone is a daily health standard. U.S. EPA has always insisted that companies keep daily records so that they know on a daily basis that they're meeting the standard. U.S. EPA has expressed concern with this based on their comment, and I want to register my concern about it as well. (IKE)

Response: IDEM does not believe this incentive provides reasonable opportunity to violate VOC emission limits in normal operations. The same concern relative to the averaging of noncompliant coatings with compliant coatings applies on a daily basis as well. The U.S. EPA prohibition referenced is not in any applicable federal regulations, therefore, not enforceable. IDEM has had discussions with U.S. EPA on this particular incentive and based on these discussions, believes we will reach an agreement.